

ENTERED

October 18, 2024

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

TABARI S. STRONG,

Plaintiff,

V.

BRYAN COLLIER, *et al.*,

Defendants.

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CIVIL ACTION NO. 2:23-CV-00308

ORDER ADOPTING MEMORANDUM AND RECOMMENDATION

Before the Court is Magistrate Judge Jason Libby's Memorandum and Recommendation ("M&R"). (D.E. 32). The M&R recommends that the Court:

- (1) Retain Plaintiff's due process claim for injunctive relief against Director Lumpkin and McConnell Unit Warden Amonett in connection with his difficulty or inability to access his own money which has been deposited in his TDCJ inmate trust fund account;
- (2) Dismiss without prejudice Plaintiff's claims for monetary damages against the defendants in their official capacities as barred by the Eleventh Amendment; and
- (3) Dismiss with prejudice Plaintiff's remaining claims for failure to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1).

(D.E. 32, p. 13–14).

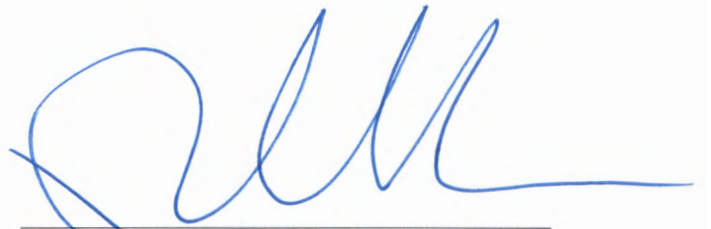
The parties were provided proper notice of, and the opportunity to object to, the Magistrate Judge's M&R. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b); General Order No. 2002-13. When no timely objection has been filed, the district court need only determine whether the Magistrate Judge's M&R is clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (per curiam); *Powell v. Litton Loan Servicing, L.P.*, No. 4:14-CV-02700, 2015 WL 3823141, at *1 (S.D. Tex. June 18, 2015) (Harmon, J.) (citation omitted). The Court determines the timeliness of a document filed by a pro se inmate based on when it is delivered to prison authorities for mailing, postage pre-paid. *See Houston v. Lack*, 487 U.S. 266, 276 (1988).

Plaintiff filed written objections to the M&R. (D.E. 37). Plaintiff's objections were due on July 16, 2024. *See* (D.E. 32, p. 14–15). Plaintiff placed his objections in the mail on July 18, 2024—two days after the July 16 due date. (D.E. 37, p. 10). Accordingly, the objections are not timely, and the Court need only determine whether the Magistrate Judge's M&R is clearly erroneous or contrary to law. *Wilson*, 864 F.2d at 1221.

Having reviewed the proposed findings and conclusions of the Magistrate Judge, the filings of the parties, the record, and the applicable law, and finding that the M&R is not clearly erroneous or contrary to law, the Court **ADOPTS** the M&R in its entirety. (D.E. 32). Accordingly, the Court:

- (1) **RETAINS** Plaintiff's due process claim for injunctive relief against Director Lumpkin and McConnell Unit Warden Amonett in connection with his difficulty or inability to access his own money which has been deposited in his TDCJ inmate trust fund account;
- (2) **DISMISSES** without prejudice Plaintiff's claims for monetary damages against the defendants in their official capacities as barred by the Eleventh Amendment; and
- (3) **DISMISSES** with prejudice Plaintiff's remaining claims for failure to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1).

SO ORDERED.



DAVID S. MORALES
UNITED STATES DISTRICT JUDGE

Signed: Corpus Christi, Texas
October 7, 2024